

CIVIL COVER SHEET

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

DECEMBER 13, 2006

CLERK, U.S. DISTRICT COURT

(a) PLAINTIFFS

United States

DEFENDANTS

Waste Management of Illinois, Inc., Morton International, Inc., and Rohm and Haas Chemicals, LLC

County of Residence of First Listed Defendant Cook County, Illinois

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Laura Thoms, U.S. Department of Justice, Environment and Natural Resources Division

P.O. Box 7611, Washington D.C. 20044-7611 (202) 305-0260

Attorneys (If Known)

See attached

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ PTF 1 ☐ DEF 1 Incorporated or Principal Place of Business In This State ☐ PTF 4 ☐ DEF 4
- Citizen of Another State ☐ PTF 2 ☐ DEF 2 Incorporated and Principal Place of Business In Another State ☐ PTF 5 ☐ DEF 5
- Citizen or Subject of a Foreign Country ☐ PTF 3 ☐ DEF 3 Foreign Nation ☐ PTF 6 ☐ DEF 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excl. vet.) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Inj.	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 ADA—Employment <input type="checkbox"/> 446 ADA—Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Security/Commodity/Exch. <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Enter U.S. Civil Statute under which you are filing and write a brief statement of cause.)

Claim for reimbursement of costs under the Comprehensive Environmental Response, Compensation, and Liability Act

VII. PREVIOUS BANKRUPTCY MATTERS (For nature of suit 422 and 423, enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this Court. Use a separate attachment if necessary)

VIII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

\$1,042,753+

 CHECK YES only if demanded in complaint:
 JURY DEMAND: ☐ Yes ☐ No

IX. This case

☐ is not a refiling of a previously dismissed action.

☐ is a refiling of case number _____, previously dismissed by Judge _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

12/7/06

Laura Thoms

DECEMBER 13, 2006

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURTIN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

06 C 6880

UNITED STATES OF AMERICA

Plaintiff,

v.

WASTE MANAGEMENT OF ILLINOIS, INC.,
MORTON INTERNATIONAL, INC., and ROHM AND
CHEMICALS, LLC

Defendants.

CIVIL ACTION NO.

JUDGE GOTTSCHALL
MAGISTRATE JUDGE BROWNCOMPLAINT

Plaintiff, the United States of America, by the authority of the Attorney General of the United States of America, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and by and through its undersigned attorneys, alleges as follows:

NATURE OF THE ACTION

1. This is a civil action pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607, as amended. The United States seeks recovery of un-reimbursed costs incurred by the United States in responding to a release and/or threatened release of hazardous substances at the H.O.D. Landfill Site at 55 McMillen Road in Antioch, Lake County, Illinois. In addition, the United States seeks a declaratory judgment under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that Defendants are jointly and severally liable for any future response costs incurred by the United States in connection with the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and the parties hereto pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. § 9607(a) and 9613(b), and pursuant to 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and pursuant to 28 U.S.C. § 1391(b) and (c), because the threatened and/or actual releases of hazardous substances occurred, and the Site is located, in this district.

DEFENDANTS

4. Defendant Waste Management of Illinois, Inc. (“WMII”) is a corporation organized under the laws of the State of Delaware, which is registered to do business in the State of Illinois. WMII is the current owner and operator of the H.O.D. Landfill Site, and was the owner and operator of the Site at the time of disposal of hazardous substances. WMII is also a legal successor to other entities that owned and operated the site at the time of disposal of hazardous substances, including H.O.D. Disposal, Inc. and C.C.D. Disposal, Inc.

5. Defendant Morton International, Inc. (“Morton”) is a corporation organized under the laws of the State of Indiana, which is registered to do business in the State of Illinois. Morton is a fully-owned subsidiary of Rohm & Haas Co. Morton is a legal successor to several corporate predecessors that arranged for disposal of a substantial volume of wastes containing hazardous substances at the H.O.D. Landfill Site, including the Morton Chemical Company division of Morton-Norwich Products, Inc. and the Morton Chemical division of Morton Thiokol, Inc.

6. Defendant Rohm and Haas Chemicals, LLC (“Rohm and Haas Chemicals”) is a limited liability corporation organized under the laws of the State of Delaware, which is registered to do business in the State of Illinois. On information and belief, Rohm and Haas Chemicals is a legal successor to several corporate predecessors that arranged for disposal of a substantial volume of wastes containing hazardous substances at the H.O.D. Landfill Site, including the Morton

Chemical Company division of Morton-Norwich Products, Inc. and the Morton Chemical division of Morton Thiokol, Inc.

BACKGROUND

Site Background

7. The H.O.D. Landfill Site consists of an approximately 51-acre portion of a 121.5 acre property located at 55 McMillen Road in Antioch, Lake County, Illinois.

8. The Site is bordered on the South and West by Sequoit Creek, and Silver Lake is located approximately 200 feet southeast of the Site. A large, seasonal wetland area extends south of the Site from Sequoit Creek.

9. Approximately 14,300 people live within three miles of the Site. There are approximately 40 private wells and 6 public water supply wells in the vicinity, which are used for domestic purposes, including drinking water. The closest municipal well to the H.O.D. Landfill Site is approximately 400 feet from the Site's western boundary.

10. The Site was operated as a landfill from approximately October 1963 to 1984. Various solid and liquid wastes, including hazardous substances, were disposed of at the Site.

11. H.O.D. Disposal, Inc. owned the H.O.D. Landfill Site from approximately August 1965 to approximately December 1972 and operated the Site from August 1965 to approximately June 1973. C.C.D. Disposal, Inc. owned the H.O.D. Landfill Site from approximately December 1972 to approximately June 1973.

12. WMII merged with H.O.D. Disposal, Inc. and C.C.D. Disposal, Inc. in June of 1973, becoming the legal successor to those two entities.

13. WMII became an owner and operator of the H.O.D. Landfill Site in approximately June of 1973 upon its merger with H.O.D. Disposal, Inc. and C.C.D. Disposal, Inc., and currently remains an owner and operator of the Site.

14. By late 1983, the H.O.D. Landfill Site was filled to capacity, and in 1984, WMII stopped accepting waste for disposal at the Site when it was denied state permits to expand the landfill.

15. The Site was closed and capped in 1989. Since that time, erosional rills and gullies have developed in some areas of the landfill cover. In addition, several areas of differential settlement and stressed vegetation have developed since the cap construction.

Initial Assessment and Investigation

16. In February of 1983, EPA conducted a preliminary assessment of the Site, and found contamination of the ground water and surface water at the Site. EPA conducted a site inspection in July of 1984 and an expanded site inspection beginning in April of 1987, and found elevated levels of zinc, lead, cadmium, trichloroethylene, 1,2-dichloroethylene in the groundwater. Based on the results of the inspections, EPA placed the H.O.D. Landfill Site on the National Priorities List on February 21, 1990. *See* 55 Fed. Reg. 6162.

17. On November 5, 1993, the United States District Court for the Northern District of Illinois entered a consent decree by which the settling defendants – including Morton and WMII – agreed to provide reimbursement of \$636,000 in response costs incurred by EPA at the H.O.D. Landfill Site through August 19, 1990. Nov. 5, 1993 Consent Decree in *United States v. Allied Signal*, Civil Action No. 93C4577 (N.D. Ill.).

Remedial Investigation/Feasibility Study

18. On August 20, 1990, EPA issued an Administrative Order on Consent with WMII to perform the remedial investigation/feasibility study (“RI/FS”) and to pay EPA’s costs for oversight of the RI/FS.

19. WMII completed the remedial investigation report in February of 1997, which identified the following contamination:

- a. Landfill gases consisting of methane with detectable concentrations of volatile organic compounds (“VOCs”);

- b. Leachate consisting of VOCs, semi-volatile organic compounds (“SVOCs”), and inorganic compounds (“IOCs”);
- c. Surface soils containing VOCs, SVOCs, and a pesticide (4,4-DDD);
- d. Surficial sand and clay diamict containing VOCs and IOCs;
- e. Deep sand and gravel aquifer containing VOCs and IOCs;
- f. Surface water containing IOCs and estimated detections of VOCs; and
- g. Sediments containing arsenic and SVOCs.

20. The remedial investigation also found vinyl chloride in a monitoring well adjacent to and downgradient of the waste boundary at the Site as high as 35 ppb. The Safe Drinking Water Act maximum contaminant level established by the EPA for vinyl chloride is 2 ppb. Vinyl chloride is classified as a “Group A” carcinogen by the EPA – one for which sufficient evidence has been found in epidemiologic studies to support causal association between exposure to the contaminant and cancer in humans. The vinyl chloride-contaminated well is in the same deep sand and gravel aquifer that is used for supplying water to public and private wells in the vicinity of the H.O.D. Landfill Site.

21. WMII completed its feasibility study in June of 1998.

Remedial Design and Remedial Action

22. On July 22, 1998, EPA published the notice of completion of feasibility study and the proposed plan for remedial action, providing opportunity for public comment on the proposed remedial action, and on September 28, 1998, EPA published its record of decision (“ROD”) on the remedial action to be implemented at the H.O.D. Landfill Site. The state of Illinois concurred with the ROD.

23. The ROD called for landfill cap restoration and maintenance; institutional controls and Site access restrictions; upgrade of the landfill gas collection system; active leachate extraction; treatment of leachate at a publicly owned treatment works; a pre-design investigation to further study the extent, if any, of a groundwater contaminant plume; monitored natural attenuation of

contaminated groundwater over 30 years; and possible active groundwater remediation if significantly more groundwater contamination is found during the pre-design investigation, if the VOCs in the groundwater are found to be migrating, or if the remedial actions taken do not cause a decrease over time in the groundwater contaminant levels.

24. On April 14, 1999 the Director of the Superfund Division for EPA Region 5 issued a Unilateral Administrative Order for Remedial Design and Remedial Action (the “UAO”). The UAO required the respondents – which included Defendants Morton and WMII – to:

- a. develop and submit to EPA for approval a pre-design investigation workplan to further study the extent, if any, of a groundwater contaminant plume;
- b. implement the approved pre-design investigation workplan;
- c. develop and submit to EPA for approval a remedial design/remedial action (“RD/RA”) workplan developed in accordance with the ROD; and
- d. implement the approved RD/RA workplan.

25. Morton took no action in response to the UAO.

26. WMII submitted the required workplans under the UAO to EPA, and initiated construction activities at the Site pursuant to the approved RD/RA workplan on August 21, 2000. WMII substantially completed construction activities on July 17, 2001.

27. As of July 31, 2006, EPA has incurred at least \$871,091.64 in un-reimbursed costs at the H.O.D. Landfill Site, and \$171,661.29 in interest, totaling \$1,042,752.93. To date, Defendants have not reimbursed EPA for this amount.

COUNT ONE

Recovery of Costs Under CERCLA § 107, 42 U.S.C. § 9607

28. Paragraphs 1 through 27 are realleged and incorporated herein by reference.

29. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part: “(1) the owner and operator of ... a facility, (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, [and]

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person ... at any facility ... shall be liable for -- (A) all costs of removal or remedial action incurred by the United States Government ... not inconsistent with the national contingency plan ...”

30. Section 113(g)(2), 42 U.S.C. § 9613(g)(2), provides, in pertinent part: “In any such action [for recovery of costs] ... , the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.”

31. Defendant WMII is the current owner and operator of the H.O.D. Landfill Site within the meaning of Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1). Defendant WMII was also the owner and operator of the Site at the time of the disposal of hazardous substances within the meaning of Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2). In addition, WMII is liable as a legal successor to multiple predecessor entities that were owner and/or operators of the Site at the time of disposal of hazardous substances within the meaning of Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

32. Defendant Morton is a legal successor to multiple predecessor entities that arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the H.O.D. Landfill Site within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

33. On information and belief, Defendant Rohm and Haas Chemicals is a legal successor to multiple predecessor entities that arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the H.O.D. Landfill Site within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

34. The H.O.D. Landfill Site is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), because it is a site or area where hazardous substances have been deposited, stored, disposed of, or placed, or otherwise come to be located.

35. There have been “releases,” or the substantial threat of releases, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), of hazardous substances at or from the H.O.D. Landfill Site, including releases or threatened releases of zinc, lead, cadmium, trichloroethylene, and 1,2-dichloroethylene, among other hazardous substances.

36. In response to the release or substantial threat of release of hazardous substances at the H.O.D. Landfill Site, the United States has taken response actions at the H.O.D. Landfill Site within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), and has incurred response costs as set forth in Paragraph 27 in connection with taking those response actions. Additional response costs have been and continue to be incurred, including enforcement costs.

37. The response action taken and the response costs incurred by the United States at and in connection with the H.O.D. Landfill Site were not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

38. Defendants are jointly and severally liable to the United States pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all un-reimbursed response costs incurred, and to be incurred, by the United States in connection with the H.O.D. Landfill Site facility, including enforcement costs and prejudgment interest on such costs.

39. Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the United States is entitled to a declaratory judgment that each of the Defendants is jointly and severally liable for future response costs that the United States may incur in connection with the H.O.D. Landfill Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court:

1. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), enter judgments against each Defendant, jointly and severally, in favor of the United States for all un-reimbursed costs

incurred by the United States for response actions taken in connection the H.O.D. Landfill Site, including prejudgment interest;

2. Enter a declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that Defendants are liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for future response costs incurred at the H.O.D. Landfill Site by the United States.

3. Award the United States the costs of this action; and

4. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

W. BENJAMIN FISHEROW
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

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